STATE OF MICHIGAN

COURT OF APPEALS

GENESEE DISTRICT LIBRARY RETIREES ASSOCIATION, CYNTHIA FRY, KAREN BAILEY, DELORIS KING, PRISCILLA KHIRFAN, RONNY LONG, GAIL LUTTON, JERRELDEENE MCCOMB, CHERYL MYATT, CHRISTINE WHITE, and CHRISTINE YURGAITES,

Plaintiffs-Appellants,

v

GENESEE DISTRICT LIBRARY FOUNDATION,

Defendant-Appellee.

UNPUBLISHED
August 13, 2020

No. 349553
Genesee Circuit Court
LC No. 17-109583-CK

Before: MURRAY, C.J., and CAVANAGH and SWARTZLE, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendant's motion for summary disposition, dismissing plaintiffs' claims that defendant breached relevant collective bargaining agreements (CBAs) by increasing retiree contributions toward the cost of healthcare benefits for all library retirees. We affirm.

Plaintiff, the Genesee District Library Retirees Association, is an association that was formed to represent the interests of persons who retired from the Genesee District Library, including the individually-named plaintiffs: (1) Cynthia Fry, who retired under the CBA in place in 2001; (2) Priscilla Khirfan, who retired under the CBA in place in 2003; (3) Gail Lutton, who retired under the CBA in place in 2008; (4) Cheryl Myatt and Deloris King, who retired under the CBA in place in 2010; (5) Christine Yurgaites, who retired under the CBA in place in 2011; and (6) Karen Bailey, Jerreldeene McComb, and Christine White, who retired under the CBA in place in 2012. Plaintiff Ronny Long was not a member of a union, but accepted a voluntary incentive retirement plan in 2010 under which he was to receive the same retirement benefits, including healthcare benefits, as the union employees received. Following their retirements, each of these plaintiffs received healthcare benefits in accordance with the various agreements.

In January 2017, defendant approved a plan to increase retiree contributions toward the cost of healthcare benefits for all Genesee District Library retirees, regardless of the relevant provisions in the agreements under which each plaintiff retired. The increase was effective as of July 1, 2017. This legal action followed in August 2017. In Count I of plaintiffs' first amended complaint, plaintiffs brought a breach of contract claim alleging that they were contractually entitled to receive lifetime healthcare benefits at the agreed upon level and at the agreed upon cost to plaintiffs notwithstanding the unilateral modification made by defendant with regard to those benefits. Thus, any change to plaintiffs' healthcare benefits—including the increase in cost to plaintiffs—constituted a breach by defendant of those contracts. In Count II, plaintiffs brought a promissory estoppel claim, alleging that defendant promised plaintiffs that they would receive healthcare benefits at the levels provided for and at the cost specified for their lifetimes and plaintiffs were induced to—and reasonably relied upon—those promises. In Count III, plaintiffs sought declaratory relief, requesting the trial court to enjoin defendant from implementing the changes to plaintiffs' healthcare benefits and to reinstate the level of benefits at the same cost as they were before the changes went into effect on July 1, 2017. Numerous documents were attached to plaintiffs' complaint, including (1) the minutes from the Genesee District Library Board Meeting held on January 23, 2017 (discussing a motion to have all retirees contribute ten percent of their annual healthcare premium, which unanimously passed); (2) the CBA for the period January 1, 1998 through December 31, 2000; (3) the CBA for the period January 1, 2001 through December 31, 2005; (4) the CBA for the period January 1, 2006 through December 31, 2008; and (5) the CBA for the period January 1, 2009 through December 31, 2012.

Subsequently, defendant filed a motion for summary disposition under MCR 2.116(C)(10), arguing that the terms set forth in the CBAs on which plaintiffs relied were valid and enforceable during the terms of those agreements. However, once those agreements expired, defendant could change plaintiffs' retirement benefits—including the amount of plaintiffs' contributions toward their healthcare costs. That is, the CBAs did not give plaintiffs vested lifetime healthcare benefits that could not be changed; the contracts were silent in that regard. Thus, plaintiffs' breach of contract claims must fail. Further, plaintiffs' promissory estoppel claims fail because express, unambiguous contracts existed and so no other "promises" could be "implied," including that healthcare premiums were capped for their lifetimes. Accordingly, defendant argued, plaintiffs' complaint should be dismissed in its entirety.

Plaintiffs responded to defendant's motion for summary disposition, arguing that the CBAs contained provisions that suggested the parties intended for retirement benefits to survive the general durational clauses. Further, plaintiffs' testimony as well as documentary evidence showed that defendant treated retiree healthcare benefits as vested benefits for decades; thus, at minimum, an ambiguity in that regard existed. While plaintiffs acknowledged that the United Supreme Court in *M & G Polymers USA, LLC v Tackett*, 574 US 427; 135 S Ct 926; 190 L Ed 2d 809 (2015), eliminated the presumption in favor of vested lifetime benefits, the language in the specific CBAs at issue in this case must prevail. As set forth in *Butler v Wayne Co*, 289 Mich App 664, 672; 798 NW2d 37 (2010), to show that the benefit conferred by a CBA or personal contract is vested, a plaintiff must show that he had a contractual right to the benefit that was to continue after the agreement expired, and the right was included in the respective contract at the time of retirement. All of the plaintiffs can meet this burden. Further, plaintiffs argued, even if the rights created by the respective agreements did not survive the general durational limits, plaintiffs reasonably relied upon representations made by city officials who assured plaintiffs that their healthcare benefits

were vested. Accordingly, plaintiffs argued, the doctrine of promissory estoppel also prevented the dismissal of their claims. Plaintiffs attached numerous exhibits to their response, including those attached to their first amended complaint, the deposition testimony of plaintiffs Long, Fry, Bailey, King, Lutton, McComb, White, and Yurgaites, and a letter addressed to plaintiff McComb from the Genesee District Library dated January 10, 2014 which stated that her health insurance copayment in the amount of $600 was due as set forth in the CBA.

Defendant filed a reply to plaintiffs' response to its motion for summary disposition, arguing that the CBAs at issue were clear and unambiguous; they created no vested, unmodifiable right to healthcare benefits and extrinsic evidence may not be used to modify their terms. See *Arbuckle v General Motors LLC*, 499 Mich 521, 542; 885 NW2d 232 (2016). Defendant stated: "The CBAs all contain a clear integration clause in their preamble and a termination clause at the end of the agreement. Each CBA is clearly durational in nature and confines the Plaintiffs' benefits to those periods and are alterable as the Court found in *Arbuckle*." Further, plaintiffs presented no evidence of definite statements or facts to support their claims for promissory estoppel; thus, these claims must also be dismissed.

The trial court agreed with defendant, and granted defendant's motion for summary disposition under MCR 2.116(C)(10). The trial court considered the history of cases in this area of the law and noted that, after the *Tackett* decision, a plaintiff claiming vested benefits under a CBA was required to argue that a latent ambiguity existed in the contractual agreement, thus justifying an examination of extrinsic evidence to determine the precise meaning of its terms. However, the recent United States Supreme Court case of *CNH Indus NV v Reese*, ___ US ___; 138 S Ct 761, 764; 200 L Ed 2d 1 (2018), and Sixth Circuit Court of Appeals case of *Cooper v Honeywell Int'l, Inc*, 884 F3d 612, 620-621 (CA 6, 2018), eliminated that argument to overcome the plain language of an agreement. In other words, a purported "latent ambiguity" is no longer sufficient. Instead, for benefits to be considered vested beyond the CBA's expiration there must be an obvious or explicit intent to that effect in the CBA. The trial court noted that, in light of the *Reese* and *Cooper* decisions, although some provisions may appear to extend beyond the duration of the agreement, they "are only presumed to guarantee benefits until the agreement expires, nothing more." (Internal quotation marks omitted). And in this case, the trial court held:

> Plaintiffs are unable to show language within the four corners of any of the CBAs showing an intent to vest benefits beyond the duration of the respective agreement; only provisions that arguably extend beyond them. This ends the analysis pursuant to *Reese* and *Cooper*. As such, there is no entitlement to an examination of extrinsic evidence, such as expressions of intent outside the agreements or past practices consistent with that intent.
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> For the above reasons, as a matter of law, Plaintiffs are unable to establish that the CBAs created a contractual vested benefit that caps their benefits.

The trial court also rejected plaintiffs' promissory estoppel claims, holding that even if municipal officials represented that plaintiffs enjoyed vested benefits, the estoppel claims must fail because only the Board of Trustees had the authority to determine benefits—not "municipal officials." See *Parker v West Bloomfield Twp*, 60 Mich App 583, 596; 231 NW2d 424 (1975) ("Estoppel did not apply where defendant lacked the power to engage in that specific course of conduct.").

Accordingly, the trial court granted defendant's motion and dismissed plaintiffs' complaint in its entirety. Plaintiffs' motion for reconsideration was denied, and this appeal followed.

Plaintiffs argue that the trial court erred in concluding that the CBAs at issue unambiguously limited retiree healthcare benefits to the duration of the agreements from which they were derived, and thus, improperly refused to consider extrinsic evidence in that regard. We disagree.

We review de novo a trial court's decision to grant a motion for summary disposition. *Lakeview Commons v Empower Yourself, LLC*, 290 Mich App 503, 506; 802 NW2d 712 (2010). A motion brought under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and should be granted if, after consideration of the evidence submitted by the parties in the light most favorable to the nonmoving party, no genuine issue regarding any material fact exists. *Id.* Further, "the proper interpretation of contracts and the legal effect of contractual provisions are questions of law subject to review de novo." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504 (2012).

Plaintiffs alleged that they were contractually entitled to receive lifetime healthcare benefits at the agreed upon level and at the agreed upon cost to plaintiffs and that the unilateral modification made by defendant with regard to those benefits constituted breach of contract. To establish a breach of contract claim, a party must show by a preponderance of the evidence that there was a contract, which was breached, and resulted in damages. *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). In this case, it is not disputed that each plaintiff retired under the terms of a CBA. Plaintiffs Fry and Khirfan retired under the CBA in effect from January 1, 2001 through December 31, 2005. Plaintiff Lutton retired under the CBA in effect from January 1, 2006 through December 31, 2008. And plaintiffs Myatt, King, Long[1], Yurgaites, Bailey, McComb, and White retired under the CBA in effect from January 1, 2009 through December 31, 2012. The parties agree that the CBAs at issue all contained very similar language with regard to retiree healthcare benefits. The issue is whether the terms of these CBAs were breached when defendant modified plaintiffs' healthcare benefits. To make that determination, we turn to the relevant contract provisions.

The CBA in effect from January 1, 2001 through December 31, 2005 stated in its Preamble:

> The following constitutes an entire Agreement between the parties and no verbal statement shall supersede any of its provisions. This Agreement embodies all the obligations between the parties evolving from the collective bargaining process and supersedes all prior relationships existing by past practices.

Article XVII provided for retirement benefits, including healthcare benefits under Section C as follows:

[1] While Long was not in the union, he testified that he was to receive the same retirement benefits that union employees received under the CBA in effect in 2010 and defendant did not dispute that claim.

> 1. The benefit levels of health insurance coverage for employees who retired prior to January 1, 2001, the effective date of this Agreement, shall be unchanged, and shall continue to be as was in effect on December 31, 2000. . . .
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> 2. Employees who retired from active employment with Employer before January 1, 1998, shall be eligible for full Employer-paid health insurance coverage, but shall not be required to pay the cost of any increase in health insurance premiums required by Article XVI [health insurance for active employees].
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> 3. Employees who retired from active employment with Employer between January 1, 1998 and December 31, 2000 shall be eligible for full Employer-paid health insurance coverage; provided that they pay fifty (50%) percent of any increase in health insurance premiums, up to an annual maximum of $460.00, as provided in Article XVI.
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> 4. Employees who retire from active employment with Employer on or after January 1, 2001, pursuant to Section B above [voluntary retirement eligibility requirements], shall be eligible for Employer-paid health insurance coverage as indicated in subparagraphs (a) and (b) below; provided that they pay fifty (50%) percent of any increase in health insurance premiums, up to an annual maximum of $460.00, as provided in Article XVI.
>
> (a) Employees who retire with at least twenty-five (25) years of credited service and employees who retire at sixty (60) years of age or older, but who were hired before July 1, 1995, shall be eligible for full Employer-paid health insurance coverage.
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> (b) Employees with less than twenty-five (25) years of credited service who retire at sixty (60) years of age or older, but who were hired after July 1, 1995, shall be eligible for eighty (80%) percent Employer-paid health insurance coverage. The employee portion of the cost for health insurance coverage shall offset the annual employee maximum for such increases in health insurance premiums on a dollar-for-dollar basis.

Article XXVI pertained to the termination of the CBA and stated that it would remain in full force and effect until December 31, 2005, but would be automatically renewed from year to year thereafter unless either party provided proper notification of its desire to modify or terminate the agreement.

The Preamble section in the CBA in effect from January 1, 2006 through December 31, 2008 included the identical provision as set forth above. Article XVII provided for retirement benefits, including healthcare benefits under Section C. Paragraphs 1 and 2 were identical to the previous CBA. Paragraphs 3 and 4 provided as follows, with the differences being italicized below:

> 3. Employees who retired from active employment with Employer between January 1, 1998 and *December 31, 2005* shall be eligible for full Employer-paid health insurance coverage; provided that they pay fifty (50%) percent of any increase in health insurance premiums, up to an annual maximum of $460.00, as provided in Article XVI.

> 4. Employees who retire from active employment with Employer on or after *January 1, 2006*, pursuant to Section B above [voluntary retirement eligibility requirements], shall be eligible for Employer-paid health insurance coverage as indicated in subparagraphs (a) and (b) below; provided that they pay fifty (50%) percent of any increase in health insurance premiums, up to an annual maximum of *$600.00*, as provided in Article XVI.

Subparagraphs (a) and (b) following provision 4 were identical. Article XXVI pertained to the termination of the CBA and stated that it would remain in full force and effect until December 31, 2008, but would be automatically renewed from year to year thereafter unless either party provided proper notification of its desire to modify or terminate the agreement.

The Preamble section in the CBA in effect from January 1, 2009 through December 31, 2012 included the identical provision as set forth above. Article XVII provided for retirement benefits, including healthcare benefits under Section C, and was identical to the immediately preceding CBA, including paragraphs 1, 2, 3, and 4, as well as subparagraphs (a) and (b). Article XXVI pertained to the termination of the CBA and stated that it would remain in full force and effect until December 31, 2012, but would be automatically renewed from year to year thereafter unless either party provided proper notification of its desire to modify or terminate the agreement.

Collective bargaining agreements are contracts and the goal in contract interpretation is to enforce the intent of the parties as determined by the plain and unambiguous language of the contract. *Kendzierski v Macomb Co*, 503 Mich 296, 311; 931 NW2d 604 (2019) (citation omitted); *Harper Woods Retirees Ass'n v City of Harper Woods*, 312 Mich App 500, 508; 879 NW2d 897 (2015). Extrinsic evidence may be presented to determine the intent of the parties only if an ambiguity exists. *Kendzierski*, 503 Mich at 311 (citation omitted). A *patent* ambiguity arises from the language of the contract itself and exists only if a contract term is equally susceptible to more than one meaning or if two contract provisions irreconcilably conflict. *Id*. at 311, 317 (citations omitted). A *latent* ambiguity arises from a collateral matter when the contract's terms are applied, although the language of the contract itself appears clear and unambiguous. *Id*. at 317 (citations omitted). That is, "other facts create the necessity for interpretation or a choice among two or more possible meanings." *Id*. (quotation marks and citations omitted).

To demonstrate that a benefit conferred in a CBA is deemed to be vested, a retiree must show that (1) he had a contractual right to the claimed benefit *in perpetuity*, i.e., it was to continue after the agreement's expiration, and (2) the right was included in the contract at the time of retirement. *Butler*, 289 Mich App at 672. In this case, plaintiffs argue that they had a vested right to non-modifiable lifetime healthcare benefits under the relevant CBAs. However, plaintiffs have failed to refer us to any specific express contractual language that confers such a right. Plaintiffs admit that the CBAs contain general durational clauses, but claim that "they also contain provisions that would survive the general durational clause." In that regard, plaintiffs refer us to Article XVI(C)(4) of the 2009-2012 CBA and claim that "[b]ecause coverage is contingent on payment of a portion of the increased costs of premiums up to annual maximum, it appears that the parties contemplated the agreement would survive the duration agreement." But as the trial court concluded, this provision—and those that are similar—are unambiguous and simply did not confer a contractual right to non-modifiable healthcare benefits in perpetuity for retirees. There is no clear, explicit promise to provide a certain duration or level of healthcare benefits to retirees

beyond the term of each contract. See *Kendzierski*, 503 Mich at 322. As the trial court held, because there is no patent ambiguity, no extrinsic evidence may be considered.

Plaintiffs also argue that even if the CBAs did not have an express provision conferring the right to lifetime non-modifiable healthcare benefits, a vested right existed because past practice amended those contract provisions. See *Butler*, 289 Mich App at 674. "[T]he past-practice doctrine may only be used to establish that a contractual right existed at the time of retirement." *Id*. at 676. In other words, a retiree must show that the past practice had modified the CBA under which he retired and thereby established the right at the time of his retirement. *Id*. So any action relied upon to establish a past practice claim must have occurred before the date of the plaintiff's retirement otherwise the claim fails. *Id*. Plaintiffs argue that, because of defendant's past practice of "providing retiree health care premiums as a vested right," a latent ambiguity existed requiring consideration of extrinsic evidence to determine the parties' intent with regard to the CBAs at issue. Thus, plaintiffs argue, the trial court erred when it refused to consider extrinsic evidence. But the Preamble of every CBA at issue stated: "This Agreement embodies all the obligations between the parties evolving from the collective bargaining process and supersedes all prior relationships existing by past practices." Thus, each agreement clearly and specifically refuted the premise of plaintiffs' claim. Moreover, it is well established that for a party to show that "past practice" defeats the unambiguous terms of a CBA there must be evidence of the contracting parties' affirmative intent, i.e., a meeting of the minds, to modify that agreement so as to establish new terms and plaintiffs have presented no such evidence. See *Macomb Co v AFSCME Council 25*, 494 Mich 65, 81-82; 833 NW2d 225 (2013).

In summary, no genuine issue of material fact exists that the terms of the relevant CBAs were not breached when defendant modified plaintiffs' healthcare benefits; thus, plaintiffs' breach of contract claims fail and were properly dismissed.

Finally, plaintiffs argue that the trial court erred when it dismissed their promissory estoppel claims. Essentially, plaintiffs appear to argue that they would not have retired or would have acted differently in some way but for the purported assurances by city officials that upon retirement they would have non-modifiable healthcare benefits for their lifetimes. But to establish a promissory estoppel claim a plaintiff must prove that a definite and clear promise was made, at minimum. *State Bank of Standish v Curry*, 442 Mich 76, 84-85; 500 NW2d 104 (1993); *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 552; 487 NW2d 499 (1992). Plaintiffs have not established that a definite and clear promise was made by city officials as to their healthcare benefits. Further, because the matter of retiree healthcare benefits was specifically addressed in the CBAs, city officials had no authority to make any such assurances and plaintiffs did not "reasonably rely" on any such "assurances." See *Curry*, 442 Mich at 83-84; *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008) (setting forth the

elements of promissory estoppel). Accordingly, the trial court did not err in granting defendant's motion for summary disposition, dismissing plaintiffs' claims in their entirety.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Brock A. Swartzle